

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5285 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

J K PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner

MR P. UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/1999

ORAL JUDGEMENT

1. The respondent J.K.Patel was employed by the petitioner the Gujarat State Road Transport Corporation, Ahmedabad as Conductor. In the course of discharge of his duties as Conductor on 30.10.1976 the respondent was on duty in the bus plying between Radhanpur - Piparla.

The Checking staff found serious irregularities and the allegation was that the respondent having collected Rs.8.10 ps. from the group of passengers, did not issue tickets to them. Unpunched tickets were taken into custody. It was also alleged that the respondent had collected Rs.1.80 ps. from two passengers travelling between Radhanpur to Satpura without issuing tickets. The Departmental enquiry was initiated against the respondent. He was given adequate and reasonable opportunity to defend himself. Upon considering the material and evidence collected in the course of inquiry, the Inquiry Officer found that the respondent was guilty of road booking in Local bus and the charges were found established that 13-1/2 tickets were not issued to the passengers travelling in that bus. Two more passengers were taken on the way, but no tickets were issued to them though the fare was realised from them. In the Departmental Enquiry the respondent was dismissed from service. Feeling aggrieved from the said order the respondent filed First Appeal before the Departmental Appellate Authority. The Appeal was partly allowed and the order of dismissal was set aside and substituted by an order placing the respondent in the basic pay of the Conductor. Still feeling aggrieved the respondent approached before the Industrial Tribunal for quashing this order of the Appellate Authority. The Award of the Industrial Tribunal dated 28.6.1985 is under challenge in this petition.

2. Learned Counsel for the petitioner Shri Hardikc Raval has been heard. This petition was admitted on 18.1.1991. So far no counter Affidavit has been filed by the respondent nor any one is present from his side today though the case was called out thrice. As such, Shri Raval was heard and the impugned Award has been examined.

3. The contention of Shri Raval is that serious charge against the respondent was established whereupon he was dismissed. The Departmental Enquiry was conducted in accordance with Rules and the respondent was given sufficient opportunity of adducing defence as well as of hearing. Show cause notice was also issued to the respondent. Initially the order for dismissal of respondent was passed, but in Appeal it was modified by an order placing the respondent in the reduced scale, namely, his original scale, as Bus Conductor. Instead of this the Tribunal has further modified that order by observing that the punishment was excessive and reduced the punishment of stoppage of three Annual increment with effect from 24.1.1978 without permanent effect. The basic contention of Shri Raval has been that the

Industrial Tribunal was not justified in further reducing the punishment keeping in view the nature of seriousness of charges established against the respondent. He has relied upon a Division Bench pronouncement of this Court in the case of G.S.R.T.C. v/s. Jamnadas Becharbhai reported in 1982 (2) G.L.H. 1057. However, the verdict of this case cannot be applied to the facts of the case before me for the obvious reasons that the strictness which was required to be observed by the Appellate Authority was already diluted by him and the punishment of dismissal was modified to the punishment of placing the respondent in the lower scale as Bus Conductor. Consequently and also because the order of the Appellate Authority is not in challenge before this Court, the order of dismissal cannot be revived.

4. So far as the impugned award is concerned, apparently it is illegal and can not be sustained. In Para : 6 of the Award the Tribunal has observed that the Union has not challenged the legality and validity of the Departmental Enquiry. A Purshis to this effect Ex.21 was also given by the Union and it was declared through this purshis that the respondent did not want to lead any oral evidence. Once the legality and validity of the Departmental Enquiry was not challenged naturally the finding of guilt also could not be challenged nor it was challenged. The only challenge was to the quantum of punishment. The Tribunal also decided only the question of punishment. The Tribunal in Para : 8 of the Award has discussed the relevant facts and was in agreement that with the two Authorities that the charges were established against the respondent. Still the Industrial Tribunal wanted to investigate the question whether this punishment which has been imposed on the workman by the Appellate Authority is proper and legal. While investigating this question the Tribunal proceeded to examine the matter on conjectures and surmises. It observed that it is possible that the concerned employee was issuing tickets in road booking and because of it the tickets might not have been issued to those passengers. The Tribunal further observed that the version of the respondent that he had gone to collect the tiffin and bedding was incorrect because according to the version of the Reporter at the time of checking the Bus, the Conductor was sitting on his sit in the bus. This evidence of the reporter was not disbelieved nor could be disbelieved by the Tribunal. The Tribunal further observed that it does not appear that the said employee was totally innocent. In spite of this, the Tribunal wanted to further reduce the punishment and observed that at the time of incident, which took place, the conductor

had served about 7 years of service and in these circumstances the punishment for placing him on the basic pay in the Conductor's grade appears to be excessive, harsh and penalising looking to the facts and circumstances of the case. It is at this juncture the Tribunal has introduced its own imagination and has reduced the quantum of punishment on the grounds which are hardly tenable. Serious misconduct was up-held by the Tribunal and it further observed that the employee was not totally innocent hence should have taken into consideration the misconduct, namely, misappropriation of fare collected by the respondent in discharge of his duty as conductor. Such misconduct should not have been lightly taken by the Tribunal especially in view of the guidelines laid down by the Division Bench of this Court in G.S.R.T.C. v/s. Jamnadas (Supra). Since the order of dismissal was modified by the Appellate Authority the Industrial Tribunal should not have reduced the punishment further to the stoppage of three annual increments with no future consequences. Likewise the Tribunal was apparently in error in observing that the quantum of punishment reduced by the Appellate Authority was, in any way, harsh, excessive or penal. The Tribunal observed that looking to the facts and circumstances of the case this punishment was harsh, excessive and penal. The facts and circumstances mentioned by the Tribunal are that since no such incident took place in the past year hence such punishment should not have been awarded by the Appellate Authority. However, it does not mean that if no checking was conducted earlier the punishment should have been reduced for serious misconduct on the part of the respondent which was noticed by the checking staff and was duly proved by adequate and reliable evidence.

5. In view of the aforesaid discussions the Award of the Industrial Tribunal cannot be sustained as it is neither legal nor justified and it based on imagination, surmises and conjectures.

6. The petition, therefore, succeeds and is allowed. The impugned Award dated 28.6.1985 of the Industrial Tribunal is hereby quashed. Since none has appeared from the side of the respondent no order as to costs.

sd/-

Date : December 17, 1999 (D. C. Srivastava, J.)

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